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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,652	12/27/2001	Mary Brown	10357-5	7701

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/026,652	BROWN ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claims 1, 22-24 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the step of "adding puff pastry shortening" is unclear because it is not known where the shortening is added to. Lines 10-11, the phrase "remainder of the ingredients" is unclear because it is not known if these are the ingredients referred to on line 2 or additional ingredients. The claim is also unclear in that there is no step of forming the dough; the body of the claim does not commensurate with the preamble.

In claim 22, the phrase "the final temperature" is unclear because it is not known what temperature the claim is referring to. The preceding claims have not recited any temperature.

Claims 23-24 have the same problem as claim 22.

Claim 29 is vague and indefinite. The claim does not set forth the processing step of the blend of ingredients in (a). All subsequent ingredients to (a) are added to the previous ingredients; but there is no recitation of adding to the blend of ingredients in step (a). Step (e) is confusing because it is not known where the puff pastry shortening is added to. Step (f) is confusing because only the ingredient of step (e) is blended; what happens to the other ingredients. The phrase "remainder of said ingredients" is unclear because it is not known what ingredients the claim is referring to. The claim is also unclear in that there is no step of forming the dough; the body of the claim does not commensurate with the preamble.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallin et al.

Wallin et al discloses a method of forming a dough of breakfast pastry and a filling enclosing the pastry. The dough comprises from about 45-60% moderately strong flour, about 30-45% of added water, about 4-20% of roll-in shortening, 0-10% sugar, .5-1.5% salt, dough conditioner, flavors and 0-.5% emulsifier. Yeast in about of .5-4% and added shortening in amount of .5-10% are also added. The dough is prepared by the steps of mixing the flours, sugar, salt dough conditioners, chemical leavening agents, egg, shortening and flavoring, adding water and yeast to the mixture and fully mixing all ingredients at a controlled temperature to form the dough. The dough temperature should not exceed about 66 degree F. The dough is laminated with the roll-in shortening. The dough is filled with filling, folded and crimped. The filled dough product

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is fried and frozen. The wheat flour used has protein content of about 9-15%. The filling is a typical fruit filling having the composition as set forth in table 1; however, the amount of modified starches and gum are increased to at level of 3.5-8% and .15-.4% respectively. The filling has a pH in the range of 2.8-7.5. (see columns 4-5,7-8,11-14).

Wallin et al do not disclose the roll-in shortening is in the form of cubes of at most 8 cm³, the addition of wheat farina in the amount and having the characteristic as claimed, the filling comprising of fruit as in claim 38, the viscosity as claimed and the sequence of mixing as in claim 29.

Wheat farina differs from wheat flour in the particle sizes. It would have been obvious to one skilled in the art to use flour of different sizes when desiring to obtain different texture. This is a matter of preference as applicant has not shown anything unexpected or criticality in the use of the farina having the size claimed. It would also have been obvious to use shortening cube of various size as long as it can effectively mixed with the dough; this is a parameter that can readily be determined by one skilled in the art through routine experimentation. It would have been obvious to use any form of fruit depending on the flavor, taste and texture desired. It would also have been obvious to use the starch and gum at the high level end to increase the viscosity of the filling when one wants a thicker filling. As to the sequence of mixing the ingredients, it would have been obvious to one skilled in the art to determine the mixing parameters that would give the most effective mixing in the most timely manner. This can readily be determined by one skilled in the art without undue experimentation. It would also have been obvious to add a reducing agent because it is a very well known dough conditioner

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and Wallin et al teach to add dough conditioner. The amount can readily be determined by one skilled in the art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tenn and Levine et al disclose fruit filling for pastry products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700